

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

**SUSAN ROY**, on behalf of herself and all others similarly situated,

Plaintiff,

v.

**ESL FEDERAL CREDIT UNION**,

Defendant.

**DECLARATION OF KIM SMITH IN  
SUPPORT OF DEFENDANT ESL  
FEDERAL CREDIT UNION'S  
MOTION TO DISMISS**

Civil Action No. 19-cv-6122  
(FPG/MWP)

I, Kim Smith, declare and state as follows:

1. I have worked for ESL Federal Credit Union (“ESL”) since August 26, 2002 and am currently employed as ESL’s Manager, Marketing Communications. In my position, I am responsible for formulating and implementing marketing campaigns to support business objectives, promotional and brand needs, as well as creating customer communications to support business operational needs. I am familiar with the records ESL maintains for its customers, including account agreements and disclosures customers receive for their accounts. These records are created in the ordinary course of ESL’s business at or about the time of the events and transactions reflected in the records. In my position, I, along with the employees under my supervision, are required to review and rely on these records as part of our job duties.

2. I have reviewed the First Amended Complaint (“FAC”) filed by Plaintiff Susan Roy (“Plaintiff” or “Ms. Roy”) in this action. The FAC alleges that ESL’s assessment of overdraft and insufficient funds fees against Ms. Roy breached ESL’s Savings and Checking Disclosure Terms and Account Agreement (the “Membership Agreement”) in several ways and attaches the Membership Agreement as an exhibit.

3. I have reviewed ESL's records relating to Ms. Roy. Ms. Roy opened a share draft (checking) account at ESL on May 20, 2008. It is ESL's practice to provide members who open checking accounts with, among other things, a copy of the Membership Agreement, the ESL Fee Schedule, and ESL's Electronic Funds Transfer Disclosure Statement and Agreement (the "EFT Agreement"), which together set forth and govern ESL's overdraft and insufficient funds fees for various transactions.

4. Attached as Exhibit 1 is a true and correct copy of the EFT Agreement in place at the time the overdraft and insufficient fee charges alleged in the FAC were assessed against Ms. Roy.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 7th day of November 2019, at Rochester, New York.

  
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Kim Smith